UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re: AUTOMOTIVE PARTS ANTITRUST LITIGATION	Master File No. 12-md-02311 Honorable Marianne O. Battani
In Re: BODY SEALING PRODUCTS	2:16-cv-03402 2:16-cv-03403
This Document Relates to: All Auto Dealer Actions All End-Payor Actions	**Oral Argument Requested**

DEFENDANT GREEN TOKAI CO., LTD'S MOTION TO DISMISS END-PAYOR PLAINTIFFS' AND AUTO DEALER PLAINTIFFS' CLASS ACTION COMPLAINTS

PLEASE TAKE NOTICE that, by the counsel listed below, Defendant GREEN TOKAI CO., LTD. ("GTC") respectfully moves this Court for an Order pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) dismissing all federal and state law claims in the Auto Dealer Plaintiffs' (Case No. 2:16-cv-11260, Doc. 5) and End-Payor Plaintiffs' (Case No. 2:16-cv-3403, Doc. 19) Amended Class Action Complaints ("CACs"). Additionally, GTC joins the Nishikawa Defendants' Motion to Dismiss Plaintiffs' Stand-Alone Illinois and South Carolina Unjust Enrichment Claims and seeks dismissal of certain state-law claims for the separate reasons set forth therein.

1. This motion raises arguments unique to Plaintiffs' CACs in the Body Sealing Products Cases and is based on the supporting brief, oral argument of counsel, and such other and further material as the Court may consider.

2. As required by Local Rule 7.1(a), counsel for GTC sought concurrence from counsel for the Auto Dealer and End-Payor plaintiffs on September 7, 2016 via telephone conference. During that call, counsel for GTC explained the nature of this motion and its legal basis and requested, but did not obtain, concurrence in the relief sought (*i.e.*, dismissal of the CACs).

WHEREFORE, GTC respectfully requests that this Court issue an Order dismissing all federal and state law claims in the Auto Dealers' and End-Payors' CACs.

Dated: November 10, 2016

Respectfully submitted,

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BRIEF IN SUPPORT OF DEFENDANT GREEN TOKAI CO., LTD'S MOTION TO DISMISS END-PAYOR PLAINTIFFS' AND AUTO DEALER PLAINTIFFS' CLASS ACTION COMPLAINTS

STATEMENT OF THE ISSUES PRESENTED

1. Can Plaintiffs bring claims for alleged indirect purchases by simply declaring that they indirectly purchased body sealing products from Defendants, without alleging any specific facts to support that claim under *Twombly*?

2. Do Plaintiffs lack Article III constitutional standing because they fail to allege that they purchased body sealing products from Defendants' customers allegedly impacted by the claimed conspiracy or any other plausible link between their claimed injury and the alleged conspiracy?

TABLE OF CONTROLLING OR MOST APPROPRIATE AUTHORITIES

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In re Apple iPhone Antitrust Litig.,
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Ashcroft v. Iqbal,
556 U.S. 662 (2009)..2, 5

Bell Atl. Corp. v. Twombly,
550 U.S. 544 (2007)..2, 4

In re Heater Control Panels,
No. 2:12-cv-00403, Doc. 93, 2014 WL 2999203 (E.D. Mich. July 3, 2014) 4

In re Magnesium Oxide Antitrust Litig.,
No. 10–5943, 2011 WL 5008090 (D.N.J. Oct. 20, 2011)..3, 5, 6

Mauldin v. Napolitano,
Civil No. 10–12826, 2011 WL 3113104 (E.D. Mich. July 26, 2011) 2, 3, 5

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INTRODUCTION

The Auto-Dealer Plaintiffs' ("ADPs") and End-Payor Plaintiffs' ("EPPs") (collectively "Plaintiffs") complaints against Green Tokai Co., Ltd. ("GTC") and the other Defendants fall far short of the threshold for pleading antitrust claims under federal or state antitrust laws. Plaintiffs must allege facts that plausibly link their purchases (and any alleged injury) to their alleged conspiracy to bring antitrust claims and show Article III standing. Their complaints do not.

In contrast to prior cases, Plaintiffs' complaints contain no specific factual allegations to suggest that ADPs or EPPs purchased or leased vehicles that contained body sealing products manufactured by Defendants or any alleged, unnamed co-conspirators—much less factual allegations sufficient to show that they were impacted by the alleged conspiracy as required to have constitutional standing. EPPs' complaint names only certain Japanese OEMs (Honda, Toyota and Subaru) as the targets of the alleged conspiracy. *See* EPPs' First Amended Class Action Complaint (Case No. 2:16-cv-03403, Doc. 19) ("EPP Compl."), ¶¶ 7-10, 20. EPPs likewise identify only the same Japanese OEMs as purchasers of body sealing products manufactured or sold by Defendants. *Id.* at ¶ 89. The EPP Complaint does not even allege what vehicles EPPs purchased. ADPs' complaint does not allege *any* OEMs were specifically impacted by the alleged conspiracy, and many ADPs allege that they were *not* even authorized dealers for the OEMs to whom they allege Defendants sold body sealings. ADPs' First Amended Class Action Complaint (Case No. 2:16-cv-11260, Doc. 5) ("ADP Compl."), ¶¶ 21-56. Without factual allegations regarding what vehicles or vehicle brands they purchased, there are insufficient facts in the complaints to infer that Plaintiffs indirectly purchased body sealings from Defendants or were impacted by the alleged conspiracy. Accordingly, the Court should dismiss Plaintiffs' claims against GTC.

ARGUMENT

I. PLAINTIFFS DO NOT ALLEGE SUFFICIENT FACTS TO SUPPORT THEIR CONCLUSORY CLAIM THAT THEY INDIRECTLY PURCHASED IMPACTED BODY SEALINGS FROM DEFENDANTS OR UNNAMED CO-CONSPIRATORS

To survive a motion to dismiss, a complaint must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Conclusory allegations need not be accepted as true and should be disregarded for purposes of a motion to dismiss. *See Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (requiring a court to disregard allegations "that, because they are no more than conclusions, are not entitled to the assumption of truth"); *Twombly*, 550 U.S. at 555–57. Rather, the "complaint must contain either direct or inferential allegations respecting all material elements to sustain a recovery under some viable legal theory. Conclusory allegations or legal conclusions masquerading as factual allegations will not suffice." *Mauldin v. Napolitano*, Civil No. 10–12826, 2011 WL 3113104, at *2 (E.D. Mich. July 26, 2011) (Battani, J.) (quoting *Bishop v. Lucent Technologies, Inc.*, 520 F.3d 516, 519 (6th Cir. 2008)).

EPPs allege only that three Japanese OEMs, Honda, Toyota and Subaru, were targets of the alleged conspiracy. EPP Compl., ¶¶ 7-10, 20. EPPs do not identify any other OEMs as targets or even customers of any defendant or alleged co-conspirator. *Id.* at ¶ 89 (similarly identifying only the same Japanese OEMs as purchasers of body sealing products manufactured or sold by Defendants). Moreover, not a single EPP alleges that it purchased a vehicle manufactured by one of those OEMs; instead, each EPP pleads the conclusory claim that they "purchased at least one Body Sealing indirectly from at least one Defendant or its co-conspirators." *Id.* at ¶¶ 24-76. As set forth above, the Court should disregard such unsupported allegations "that, because they are no more than conclusions, are not entitled to the assumption of truth." *Iqbal*, 556 U.S. at 679; *Mauldin*, 2011 WL 3113104, at *2. EPP's failure to plead the necessary factual allegations—*e.g*, what vehicle each EPP purchased—may suggest concern that doing so would reveal that many EPPs *did not* purchase vehicles containing body sealings manufactured or sold by Defendants.[1]

Regardless, without factual allegations of what product they purchased to test and support their conclusory claims, EPPs claims should be dismissed. As the court held in *In re Magnesium Oxide Antitrust Litig.*, alleged indirect purchasers must identify the "specific products [they] purchased." Civ. No. 10–5943, 2011 WL 5008090, at *7 (D.N.J. Oct. 20, 2011) (dismissing claims brought by alleged indirect purchasers where they failed to allege what products they purchased). Otherwise, "it is impossible to determine whether an increase in their price is the type of injury that furthers the object of the alleged conspiracy." *Id.*; *accord In re Apple iPhone Antitrust Litig.*, No. 11-cv-06714, 2013 WL 4425720, at *6 (N.D. Cal. Aug. 15, 2013) ("At a minimum, Plaintiffs must allege facts showing that each named Plaintiff has personally suffered an injury-in-fact based on [Defendants'] alleged conduct. This requires that Plaintiffs at least purchased [the products at issue].").

Unlike prior complaints in these consolidated cases, ADPs' body-sealings complaint does not allege even the *brands* of vehicles potentially impacted by the claimed conspiracy. ADPs appear to allege only that three OEMs were customers of unspecified "Defendants" at some point in time—Ford, Toyota, and GM; however, the ADP complaint is vague as to whether those OEMs were actually Defendants' customers, alleging only that they are examples of "large automotive manufacturers," a fact that does nothing to connect ADPs to any alleged impact from any conspiracy. ADP Compl., ¶ 69 (apparently alleging that some unspecified OEMs "purchase

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[1] Although not properly considered on a motion to dismiss, in consolidated discovery in 12-md-2311, applicable in these cases, many EPPs already confirmed they did not purchase vehicles manufactured by OEMs to whom Defendants sold body sealings. The fact that EPPs have already confirmed the makes and models of vehicles they purchased underscores EPPs' lack of any justification to hide behind the vague and conclusory allegations in their complaint.

Body Sealings directly from Defendants”). Even if ADPs had alleged that Ford, Toyota and GM purchased body sealings from Defendants that were impacted by the alleged conspiracy, they still fail to allege that any ADPs purchased vehicles manufactured by the identified OEMs. Rather, 16 ADPs specifically allege that they were *not* authorized to purchase new vehicles from the identified OEMs. *Id.* at ¶¶ 21-56.[2] Since ADPs fail to identify any direct purchasers allegedly impacted by the claimed conspiracy, there is no factual support for their conclusory claims that they indirectly “bought Vehicles containing Body Sealings manufactured by Defendants and/or their co-conspirators during the Class Period.” *Id.* ADPs’ conclusory claim should be disregarded, and the Court should dismiss their complaint because they have failed to plead “enough facts” to show their allegations of indirect injury are “plausible.” *Twombly*, 550 U.S. at 570.

In addition to these fatal deficiencies, Plaintiffs’ complaints lack other allegations the Court has identified as sufficient to state a claim based on indirect purchases. Neither complaint specifically alleges that Defendants “supplied other OEMs” besides those identified in the guilty pleas referenced in Plaintiffs complaints. *See, e.g., In re Heater Control Panels*, No. 2:12-cv-00403, Doc. 93, at p. 13, 2014 WL 2999203 (E.D. Mich. July 3, 2014); *In re Occupant Safety Systems*, 50 F. Supp. 3d 869, 883 (E.D. Mich. 2014). They also lack claims that the majority of the relevant market was impacted by the alleged conspiracy. *Id.* Thus, both complaints lack specific factual allegations to connect any alleged purchases by Plaintiffs to the claimed conspiracy, which requires dismissal. *See, e.g., Magnesium Oxide*, 2011 WL 5008090 at *7; *Apple iPhone*, 2013 WL 4425720 at *6.

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[2] At least Empire Nissan, V.I.P., John Lee, Green Team, Commonwealth Volkswagen, Hodges, Cannon Nissan, Ancona, Lee’s Summit, Archer-Perdue, Table Rock, Pearce, Don Weir, Westfield, Apex, and Shearer allege that they were not authorized dealers for any Ford, Toyota or GM brand. ADP Compl. ¶¶ 19-56.

II. PLAINTIFFS HAVE NOT ALLEGED ANY INJURY RESULTING FROM THE ALLEGED CONSPIRACY AND LACK CONSTITUTIONAL STANDING

The Court also should dismiss ADPs' and EPPs' claims because Plaintiffs do not have Article III constitutional standing. Plaintiffs do not sufficiently allege a causal connection between their alleged injury and Defendants' alleged unlawful conduct. Plaintiffs rely only on naked claims that they purchased vehicles containing body sealings manufactured or sold by Defendants to support their constitutional standing. This is insufficient "because they are no more than conclusions [and] not entitled to the assumption of truth." *Iqbal*, 556 U.S. at 679; *see also Mauldin*, 2011 WL 3113104, at *2.

Here, Plaintiffs' allegations are deficient above and beyond any the Court has analyzed previously in this litigation. While Plaintiffs' allege that body sealings "follow a traceable physical chain of distribution," ADP Compl., ¶ 174; EPP Compl., ¶ 174, they do not plausibly allege who purchased vehicles containing any body sealings allegedly impacted by the conspiracy, and, in some cases, they plead specific factual allegations *contradicting* the claim that the identified plaintiffs were among the indirect purchasers. Plaintiffs identify only three OEMs as being customers of Defendants, ADP Compl., ¶ 69; EPP Compl., ¶ 89, and they do not allege that they purchased vehicles from those OEMs or that those purchases were impacted by the alleged conspiracy. In fact, at least 16 ADPs specifically allege that they were not authorized to purchase vehicles from the OEMs identified as potential purchasers of body sealings in their complaint. ADP Compl., ¶¶ 21-56. Therefore, Plaintiffs' complaints should be dismissed because they do not allege any physical chain of distribution from Defendants to their claimed purchases—and, in fact, fail to allege *what* their purchases even were. *See, e.g.*, *Magnesium Oxide*, 2011 WL 5008090 at *7; *Apple iPhone*, 2013 WL 4425720 at *6.

CONCLUSION

For the reasons stated above, GTC respectfully requests the Court dismiss ADPs' and EPPs' Amended Class Action Complaints in their entirety pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

Dated: November 10, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of November, 2016, I caused a true and correct copy of the foregoing GREEN TOKAI CO., LTD.'S MOTION TO DISMISS END-PAYOR PLAINTIFFS' AND AUTO DEALER PLAINTIFFS' CLASS ACTION COMPLAINTS and BRIEF IN SUPPORT THEREOF to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

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